IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

OP.No. 11948 of 1997(V)

PETITIONER:

P.J.MATHEW,
PUNNAPUZHA HOUSE
SOUTH PARUR.P.O.

BY ADV. SRI.P.C.CHACKO(SR.)
SRI.ROY CHACKO

RESPONDENTS:

1. TAHSILDAR,
VAIKOM

2. DISTRICT COLLECTOR, KOTTAYAM

3. CHEMBU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
BRAHMAMANGALAM-P.O.

BY ADV. SRI.T.A.SHAJI
GOVERNMENT PLEADER SRI.S.SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the application dated 30.8.1981 before the Tahsildar, Vaikom by the petitioner.

Ext.P2: True copy of notice dated 9.12.1969 issued by the Tahsildar.

Ext.P3: True copy of representation dated 17.1.1985 filed by the petitioner.

Ext.P4: True copy of Sammathapathram dated 1.1.1987 filed by the petitioner.

Ext.P5: True copy of notice dated 4.5.1987 issued by the Collector, Vaikom.

Ext.P6: True copy of notice dated 1.12.1995 issued by the Tahsildar, Vaikom.

Ext.P7: True copy of Sammatha pathram dated 29.11.95 filed by the petitioner.

Ext.P8: True copy of notice dated 16.6.97 issued by the Tahsildar, Vaikom.

Ext.P9: True copy of resolution dated 3.12.95 issued by the Chempu Grama Panchayat.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

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O.P.No.11948 OF 1997

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Dated this the 1st day of November 2007

JUDGMENT

Petitioner claims that he is in possession of 1.25 acres of Kayal Puramboke land situated in Survey No.282/1A in Chembu Village of Kayamkulam district. According to him, he purchased the said land from Smt.Radhamaniamma in the year 1979. The land is described in the document as 'virivu'.

2. Since the land is admittedly “Kayal Puramboke” belonging to the Government, petitioner had submitted Ext.P1 application on August 30, 1981 for assignment before the competent authority as provided under the Kerala Land Assignment Act and the Rules thereunder. It is contended by the petitioner that the authorities concerned had agreed to assign the land in his favour and even had queried as to whether he was prepared to pay the market value for the land in the event of its assignment in his favour. To the said query, petitioner had given his consent also. But petitioner was served with Ext.P8 communication issued by the Tahsildar, Vaikom, informing him

that the proceedings for assignment had been kept on hold as directed by the District Collector in view of the objection raised by the Chembu Grama Panchayat against the assignment. A copy of the resolution passed by the Grama Panchayat is on record as Ext.P9.

3. The prayer in this writ petition is to issue a writ of certiorari to quash Exts.P8 and P9. The other prayer is to issue a direction to respondents 1 and 2 to pass orders on Ext.P1 application for assignment expeditiously.

4. Counter affidavits have been filed on behalf of respondents 1 and 2 and also by the Secretary of the Grama Panchayat. It is on record that the Grama Panchayat has raised serious observations about the assignment of the land in favour of the petitioner. The Panchayat is of the view that the petitioner is a substantially rich person with more than sufficient land in his possession and therefore the benefits of the Land Assignment Act need not be extended to him. The land in question along with the remaining extent had been identified for assignment to “land less

people". Therefore, the proposed assignment is totally illegal and vitiated.

5. Curiously the stand taken by respondents 1 and 2 in their counter affidavit appears to be in favour of assignment. However, learned Government Pleader submits that the fact that the Collector had chosen to stall further proceedings for assignment in view of the objection raised by the Panchayat, indicates that the revenue authorities wanted to take a second look in the matter. It was therefore that Ext.P8 communication was issued by the Tahsildar and no further action was taken pursuant to issuance of Ext.P8.

6. Learned counsel for the petitioner invites my attention to Ext.P5, which undoubtedly shows that the Government had identified the above land for assignment in favour of the petitioner. He submits that the matter having advanced to such an extent, the District Collector was not justified in stalling the process of assignment merely on the basis of the objection raised by the Grama Panchayat. The contention of the learned counsel

is that the Panchayat has no authority or locus standi to raise an objection of the nature as reflected either in Ext.P9 resolution or in the counter affidavit. Learned counsel further submits that the District Collector having found that the land in question was fit for assignment and having issued Ext.P5 order, it was not at all just or proper on his part to stall the proceedings for assignment, especially since the petitioner had given his consent to pay the prevailing land value as a pre-condition for assignment. He has also raised various other contentions with specific reference to the provisions contained in the Act and the Rules in support of his plea that Exts.P8 and P9 are ex facie illegal and vitiated.

7. However, I do not propose to deal with any of the contentions in view of the submission made by the learned counsel at the Bar. He submits that the petitioner will be satisfied, if a proper direction is issued to respondent no.2 to take a decision on Ext.P1 application uninfluenced by the objections raised by the Panchayat. But, learned Government Pleader submits that the Panchayat is also entitled to be heard in the

matter, especially since public interest had been projected in the resolution passed by it. In my view, there is considerable force in the above contention raised by the learned Government Pleader. I hasten to add that I have not considered the merit of the rival contentions raised by the parties. But in my view a proper decision has to be taken by respondent no.2 without any further delay. While taking such a decision, respondent no.2 shall keep in view the entire aspects of the matter with particular reference to Exts.P4 and P5. Respondent no.2 shall also afford an opportunity of hearing to the Panchayat as well, apart from the petitioner.

A decision in the matter shall be taken in accordance with law by respondent no.2 as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment with opportunity of hearing to the petitioner and the Panchayat as indicated above.

(A.K.BASHEER, JUDGE)

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